



COMMONWEALTH OF VIRGINIA
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OFFICE OF THE CLERK OF CIRCUIT COURT

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July 14, 2003

Norman Styer, Editor
The Leesburg Today
Leesburg, Virginia

RE: Remote Access to Public Records

Dear Mr. Styer:

I was pleased that Mr. Tevlock showed interest in the new land records automation system that was introduced in the Clerk's Office this year. I am committed to improving the services and operations of the Circuit Court Clerk's Office and I feel that we have made significant progress in the past three years. One such improvement is the use of automation and technology in the land records operations. The next step to effectively using the technology is providing remote access to professionals who research the public land records through the internet with a secure and controlled subscription to the land records system. When I campaigned for Clerk of the Circuit Court in 1999, I promised to provide remote access to court records by using cost-effective technology. While Mr. Tevlock presented a variety of perspectives related to the complexity of the public records and privacy issues, I believe the average citizen in Loudoun County lacks sufficient information related to the statutory duties of Clerks of the Circuit Court with respect to public records to carefully evaluate the effectiveness of providing remote access to public records.

The fact is that the land records, which include the deeds, judgments, plats, probated wills and financing statements, have been available for public inspection for decades. The public records available in the Loudoun County Circuit Court Clerk's Office date back to 1757 when the county was formed. The Code of Virginia, which is the law in Virginia, requires Clerks of the Circuit Court to accept legal land documents for recordation and upon recordation the Clerks are required to retain these records for an indefinite period of time. Clerks are also required by law to provide reasonable public access to these land records. The retention and availability of these records enable attorneys, title professionals and other legal professionals to perform valuable title

research related to real property ownership transactions. Unfortunately, some legal documents that have been presented to the Clerk for filing or recording contained social security numbers and other private information. There was no statute or law that allowed Clerks to deny those filings but instead required Clerks to accept filings as long as the filings complied with statute. Clerks do not disseminate social security numbers. Individuals researching public records may locate social security numbers by virtue of examining public records containing this information. Traditionally, Clerks' Offices in the Commonwealth have provided public access to these public records in paper format, in bound books and on microfilm. Within the past 15 years, many Clerks' Offices have used computers to store public records. Since 1995, the Loudoun County Circuit Court Clerk's Office used a hybrid system including paper, books, microfilm and computers to retain the land records. This hybrid approach made research cumbersome and was expensive to manage. Since January 2000, I have invested in technology solutions to improve the availability of public information while reducing the cost for maintaining a myriad of systems.

The General Assembly demonstrated leadership in the early 1990's as legislation was enacted that created the Technology Trust Fund which would provide funding to Clerks' of the Circuit Court to implement technology solutions to improve public access to public records, including the use of the internet as a means of providing access. Fairfax County and Wise County were two of the first Circuit Court Clerks' Offices that began implementing technology solutions and launching remote access systems to improve the efficiency and effectiveness of fulfilling the statutory mandate of public access to land records. Before stepping into the realm of automation of the land records system and using the internet as a means of providing remote access, I consulted with many Clerks of Circuit Court, officials at the Supreme Court of Virginia, professionals who research the public records and industry experts to ensure that Loudoun was moving in the right direction. I have used more than \$700,000 from the Technology Trust Fund established by the General Assembly to finance the majority of the cost of our \$1.1 million land records automation system. This automation system involves the recordation, tax collection, scanning, data entry, quality assurance, systems administration and public access components of the land records operations. The investment in the system has not only benefited the citizens, court professionals, and the Circuit Court Clerk's Office but has provided an efficient resource to various County agencies that rely on the public records retained in the Clerk's Office. County agencies such as the Assessment Office, the Treasurer's Office, Parks and Recreation, General Services, the County Attorney, Financial Services and the Mapping Office, have traditionally had to come to the Clerk's Office to perform research or wait for the Clerk's Office to produce microfilm for these agencies to use. Today, these agencies can perform routine research essential to their respective objectives in their own offices. Providing remote access to County agencies has resulted and will continue to result in tremendous savings to the taxpayers.

While the current office space allocated for the Clerk's Office is sufficient for limited growth, there will be a need for further expansion or construction in the future to accommodate the growth in the County. The rapid growth in Loudoun County has

resulted in more real property legal transactions. The growth in real estate transactions and refinancing of mortgages results in more professionals coming to the office in person to perform research. In addition to providing more space, the Clerk's Office has been forced to install more computer workstations to provide sufficient access to public records. Continuing down the path of providing only on-site access to records will inevitably result in more expenses to the taxpayers. Utilizing remote access to the same public records, will allow the Clerk's Office to significantly reduce the tax burden on the citizens.

The remote access that the Clerk's Office is providing does not involve loading public records on the internet through the world-wide web where anyone at anytime can access these records. As Senator Bill Mims very astutely pointed out in your article, citizens should be concerned if public records are available to anyone worldwide because there is no control over who is gaining access. Instead, we are using the internet as a means to provide remote access to subscribers through a formal registration process that involves the highest security to promote controlled access. My office has worked closely with an information technology contractor and the County's Department of Information Technology to ensure appropriate firewalls and password-protected access is integrated. These security measures allow the Clerk's Office to know who is accessing the system and when the system is being accessed. In fact, the remote access system using the internet affords the Clerk's Office more security than the conventional or traditional methods of providing public access to public records. The individuals or firms who are registering for remote access to the land records system are the same professionals who visit the Clerk's Office everyday and perform research of the public records. The only difference in how they will conduct their research is that if they register for remote access and pay the appropriate fee for this service, they will be able to access the same information from their office. The decision to assess a fee of \$1,200 for a remote access subscription was made after consulting with other Clerks in the Commonwealth who have successfully implemented a remote access system. The fee was established in large measure because the Clerk's Office in Prince William County, which is using a similar computer system, has been charging a \$1,200 remote access fee.


In his article, Mr. Tevlock mentions that the Leesburg Today obtained copies of public records that contained social security numbers. Mr. Tevlock comes to the courthouse regularly and he can gain access to those records on-site in the Clerk's Office and not through the internet because the Leesburg Today does not have a remote access subscription. Therefore, preventing remote access through the internet to a controlled and secure system, does not prohibit individuals from obtaining social security numbers in the public documents. The issue of privacy is not resolved by restricting access to public documents. It is only resolved through careful discussion and review of the real issue which is how to prevent social security numbers from appearing on these documents. It is resolved by creating sound legislation that allows government agencies to use efficient and cost-saving means of retaining information while promoting the security of our citizens. Citizens, professionals, clerks and legislators need to work to achieve a balance between public records and privacy.

Therefore, the debate is not whether Clerks should utilize cost-effective technology, including secured internet subscriptions to access public records. The real debate is what can be done to promote privacy for citizens when the documents presented for filing or recording with the Clerk contain social security numbers. The General Assembly has taken steps in the right direction to protect privacy by virtue of legislation enacted in 2001 and in July 2003. In 2001, legislation authorized Clerks to redact the social security number provided in marriage licenses before making the document available to the public. On July 1st of this year, new legislation enacted now allows Clerks to deny a recording of a deed record if the social security number is present on the legal document. Prior to July 1, Clerks did not have authority to deny a recording on this basis. While this recent legislation is a step in the right direction to help Clerks ensure the privacy of our citizens, Clerks need additional legislative authority to decline to accept certain legal documents containing social security numbers and the empowerment to take additional measures as specified by law to redact social security numbers from public records under certain circumstances.

What can you as a citizen do today to protect your privacy if a legal document will be prepared and filed with the Clerk's Office? Consult with your attorney to determine whether the private information is necessary or can be removed from the legal document before it is filed with the Clerk's Office and becomes public record. Citizens should discuss their privacy concerns and their rights to privacy with their attorneys, settlement agents, mortgage companies and other professionals when legal documents are prepared as proof of a legal transaction. Again, once a legal document is filed or recorded with the Clerk's Office, that document becomes a public record and I do not have the authority to alter the public record.

I do have the authority to establish new technology programs to provide efficient and cost-effective access to public records. I have carefully planned and integrated the new technology in the Clerk's Office while remaining mindful of security measures and cost saving measures. Moving forward with the remote access technology that is currently available is a step in the right direction for the Clerk's Office and the County.

With warm regards



Gary M. Clemens
Clerk of the Circuit Court
Loudoun County